

33 CFR Part 165

[COTP Los Angeles-Long Beach, 94-004]

RIN 2115-AA97

Safety Zone; Los Angeles Harbor-San Pedro Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is adopting as final the interim rule that established safety zones in two locations on the waters of San Pedro Bay, California. The event requiring establishment of these safety zones is the dredging and landfill activities for the Port of Los Angeles Pier 400 project. Duration of this project is estimated to be 33 months. Two separate safety zone locations are covered by this rulemaking. The first location, the site of the future Pier 400, is to the east of the Los Angeles main channel, adjacent to Reservation Point. It encompasses anchorages B1-B3, B6-B8, C1-C3, and C7-C9. The second location, to the southwest of the main channel, will be used to accommodate the transformation of anchorages A1-A5 into a permanent shallow water habitat as a mitigation measure for the Pier 400 landfill project. Entry into, transit through, or anchoring within the safety zones is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This regulation is effective on February 22, 1995.

FOR FURTHER INFORMATION CONTACT: Commander Mike Moore, Chief of Port Operations, Coast Guard Marine Safety Office Los Angeles-Long Beach, California; telephone (310) 980-4454.

SUPPLEMENTARY INFORMATION: These safety zones were established via an Interim Final Rule published in 59 FR 46173 (September 7, 1994), and are necessary in order to provide for the safety of the maritime community during the dredging and fill activities connected with the Los Angeles Pier 400 construction project. The interim rule provided a 60-day period for public comment. No comments were received pertaining to this rulemaking. Therefore, the interim rule is being adopted as a final rule.

Drafting Information

The drafters of this notice are Lieutenant Commander Chris Lockwood, project officer for the Captain of the Port, and Lieutenant Commander Craig Juckniess, project attorney, Eleventh Coast Guard District Legal Office.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. Only minor delay to mariners is foreseen as vessel traffic is routed around the construction areas.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*).

Federalism

The Coast Guard has analyzed this regulation under the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2. of Commandant Instruction M16475.1B it will have no significant environmental impact and it is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

PART 165—[AMENDED]

1. Accordingly, under the authority of 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5; 49 CFR 1.46, the interim rule amending 33 CFR Part 165 which was published in 59 FR 46173 on September 7, 1994 is adopted as a final rule without change.

E.E. Page,

Captain, U.S. Coast Guard Captain of the Port, Los Angeles-Long Beach, CA.

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BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 271**

[FRL-5142-2]

Louisiana; Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Review of immediate final rule; response to public comments.

SUMMARY: The State of Louisiana applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) reviewed the Louisiana Department of Environmental Quality's (LDEQ) application and made a decision, subject to public review and comment, that Louisiana's hazardous waste program revision satisfied all of the requirements necessary to qualify for final authorization of many of the provisions of the Hazardous and Solid Waste Amendments of 1984 (HSWA) to RCRA. As such, EPA published an Immediate Final Rule on November 7, 1994, for a 45-day public review and comment period.

During the public comment period, EPA received comments from three commentors opposed to the Agency granting authorization to Louisiana for this program revision, which includes corrective action. Two commentors expressed concern about LDEQ having adequate resources and the will to enforce RCRA regulations, based on its handling of reported violations at Bayou Steel Corporation (Bayou Steel), LaPlace, Louisiana. The third commentor raised concerns about LDEQ's current appeal scheme and position on public participation in settlements. Today's publication is EPA's response to the comments received regarding this program revision authorization, which contains most rules referred to by EPA as HSWA Cluster I.

DATES: This response to the public comments received regarding final authorization for Louisiana affirms the immediate final decision previously published and notifies the public that the final authorization shall be effective on January 23, 1995.

FOR FURTHER INFORMATION CONTACT: Dick Thomas, Region 6 Authorization Coordinator, Grants and Authorization Section, RCRA Programs Branch, U.S. EPA Region 6, First Interstate Bank

Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, phone (214) 665-8528.

SUPPLEMENTARY INFORMATION:

Response to Public Comments

Two commentors stated that LDEQ consistently and repeatedly ignored complaints regarding violations of RCRA and other environmental laws at Bayou Steel. One supplied LDEQ with an independent environmental audit report of conditions at Bayou Steel to support both commentors' claims, and believed LDEQ's lack of enforcement response to those and other complaints demonstrated the State's inability to take on additional program revisions, and unwillingness to appropriately address complaints. Also, the commentors questioned if LDEQ had adequate resources to enforce the RCRA corrective action provisions in this program revision. The incidents the commentors listed do not specifically refer to laws and regulations that are a part of this final authorization, but refer to RCRA or HSWA laws and regulations.

EPA reviewed the commentors' assertions and LDEQ's actions regarding complaints about Bayou Steel. EPA noted LDEQ's files contained numerous complaints regarding Bayou Steel activities, including those from the commentors. The files showed LDEQ initiated investigations to address all but one complaint within seven days of receipt, and in that instance the investigation was initiated within seven days of a records review. State records further revealed that while LDEQ investigated all Bayou Steel complaints in an appropriate and timely manner, including those from the commentors, all were unfounded. LDEQ's inspection reports, the State's only written response to complaints, were in permanent files and available for public review. Copies of requested portions of these files were available to the public upon written request.

The State's records also showed the various divisions of LDEQ conducted twenty-nine inspections at Bayou Steel since 1993. Some resulted in enforcement actions, including penalties, for the facility's violations of Louisiana's hazardous waste regulations. However, all violations were found during State-initiated inspections that occurred prior to LDEQ receiving complaints about the facility.

Also, EPA remained convinced LDEQ has adequate resources to take on the additional portions of RCRA included in this program revision. As noted above, various divisions of LDEQ initiated many inspections at Bayou Steel since

1993, dedicating significant resources to them. These inspections, covering all media, were in addition to inspections and investigations performed by LDEQ at other facilities in the State. Because of the number and variety of complaints LDEQ received regarding Bayou Steel, the State requested EPA use its extensive resources and experience to perform a complete multi-media facility inspection. EPA considered this an entirely appropriate response based on the complaints and LDEQ's prior inspection findings. EPA initiated the Bayou Steel multi-media inspection in June 1994, and is compiling the results. In large measure, EPA's inspection findings at the facility agreed with LDEQ's.

Additionally, some complaints to the State alleged violations of Solid Waste Management Units (SWMU) or involved corrective action proceedings at Bayou Steel. During the time LDEQ inspected the facility, EPA had not authorized the State to regulate or address SWMUs or corrective action in lieu of the Agency. This lack of authority also triggered LDEQ's request to EPA for a Bayou Steel multi-media inspection.

The third commentor expressed concern about the appeal procedures and public participation rights of LDEQ's hazardous waste permitting program. The commentor asserted that LDEQ's Program Description (PD) for this program revision, obtained via a Freedom of Information Act request for documents, did not adequately describe the current State appellate review procedures.

EPA revisited the State's PD submitted with this program revision and determined it agreed with the commentor. As a result, EPA requested LDEQ to revise its PD so it more accurately reflected the State's current statutes regarding appeal procedures. LDEQ provided EPA with a revised PD that addressed these concerns.

The commentor also raised concerns about Louisiana's de novo review provisions of hazardous waste permitting decisions. The commentor asserted that the de novo review provisions could allow the District Court to become the permitting authority in Louisiana, and cited the case of *Pardue v. Stevens*, 558 So.2d 1149 (La.App.1 Cir. 1989) to support the concern. The *Pardue* court noted in its decision that a trial de novo in a judicial proceeding meant a trial anew, or from the beginning. Thus, in a trial de novo of an administrative proceeding, the Appellate Court could make its own factual determinations, exercise its own discretion, and substitute its judgment for that of the administrative agency.

The Appellate Court could act as the court or agency of original jurisdiction and the entire case would be open for decision.

EPA interpreted Louisiana's de novo provisions as allowing a District Court judge the right of review of the record only. EPA considered Louisiana's "de novo review" provision to not be the same as "trial de novo" (new trial), and under the de novo review the reviewing court can exercise only appellate jurisdiction (review of the record). The Louisiana legislature enacted laws that mandate the Secretary of LDEQ to grant or deny permits, not the judiciary. Louisiana Revised Statutes, (R.S.) § 30:2011(D)(2) provides: The Secretary shall have the following powers and duties: to grant or deny permits, licenses, * * * as are provided for in this Subtitle. Additionally, R.S. § 30:2014(A) provides, in part, that the Secretary shall act as the primary public trustee of the environment, and shall consider and follow the will and intent of the Louisiana Constitution and Louisiana statutory law in making any determination relative to the granting or denying of permits, * * * authorized by this Subtitle. This matter is also clarified in LDEQ's revised PD, which refers to the review as a de novo review of the record.

Another concern raised by the commentor was the right of citizens to appeal Louisiana hazardous waste permitting decisions. The commentor asserted that although LDEQ represented in the PD submitted with this program revision that any person aggrieved by a final permitting decision could appeal to the Court of Appeal for relief, it has taken contrary positions when its decisions were appealed. The commentor alleged LDEQ argued the courts only have jurisdiction to review its decisions where the decision resulted from an LDEQ mandatory adjudicatory hearing. Only commercial hazardous waste permits are issued after a mandatory adjudicatory hearing. Thus, none of LDEQ's hazardous waste permitting decisions, with the possible exception of commercial transporter, storage, or disposal facility permits, would be subject to judicial review. However, EPA considered this issue resolved by the Louisiana Supreme Court in *Matter of American Waste and Pollution Control Co.*, where the Court ruled that LDEQ decisions are appealable whether or not they result from a mandatory adjudicatory hearing.

The commentor also expressed concern about LDEQ's being required to provide assurance that it will provide an opportunity for public notice and comment on settlements of civil

enforcement actions. EPA determined LDEQ has a policy of public noticing settlement agreements and soliciting public comment. LDEQ assured EPA it will maintain this policy and included a restatement of its position in the revised PD.

EPA notes that even as LDEQ becomes authorized for additional RCRA provisions, the Agency will continue to be actively involved in Louisiana's hazardous waste program. EPA retains oversight authority of the delegated program and complete Federal authority over many regulations under HSWA. In addition, EPA retains Federal enforcement authority under RCRA sections 3008, 7003, and 7013.

For almost ten years, EPA and LDEQ have worked closely to address environmental issues in Louisiana. During that time, LDEQ has demonstrated its desire and ability to respond to citizen complaints and concerns about the environment.

Further, prior to EPA authorizing Louisiana for the HSWA provisions in this approval, the State demonstrated it had the capability to administer a hazardous waste program that could implement the proposed authorization, as well as effectively implement its currently authorized program. In the spirit of authorization, LDEQ and EPA will monitor and review Louisiana's hazardous waste program to ensure it remains consistent with, equivalent to, and as stringent as the Federal requirements.

EPA will continue its involvement and presence in the implementation and enforcement of LDEQ's hazardous waste program until such time in the future that the State is fully authorized for all applicable Federal laws and regulations, and continuously demonstrates the capability to implement the program to the satisfaction of EPA. Even then, EPA will retain the authority to enforce

against violators, even in an authorized State, under RCRA sections 3008, 7003, and 7013.

EPA has reevaluated its decision to approve this final authorization for the State's hazardous waste program and all documentation, including the authorization application with revised PD, and several EPA mid-year and end-of-year evaluation reports on LDEQ. Additionally, EPA considered the LDEQ HSWA capability assessment, and the State/EPA corrective action plan to resolve any Agency concerns in it. EPA hereby affirms its decision to approve this final authorization. This authorization is effective January 23, 1995.

Dated: January 13, 1995.

Barbara J. Goetz,

Acting Regional Administrator.

[FR Doc. 95-1645 Filed 1-20-95; 8:45 am]

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